

FILED

MAR 11 2011

United States Bankruptcy Court
San Jose, California

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:) Case No. 10-57978-ASW
THEODORE AND DANA SCHROEDER,) Chapter 11
Debtors.)

MEMORANDUM DECISION ON MOTION TO EMPLOY ACCOUNTANT

Before the Court is the motion to appoint an accountant filed by Debtors Theodore Schroeder and Dana Schroeder ("Debtors"). No opposition has been filed. Debtors seek to hire certified public accountant Michael Hendricks ("Accountant") to prepare Debtors' personal federal and state income tax returns for the 2010 calendar tax year. A hearing on Debtors' motion was held on February 11, 2011.

On August 2, 2010, Debtors filed a Chapter 11 bankruptcy petition. The preparation of personal tax returns for a debtor would not be beneficial and necessary to the bankruptcy estate in many circumstances. When an individual files a petition for relief under Chapter 11, two taxable entities are created: that of the bankruptcy estate and that of the individual. 26 U.S.C. § 1398. These two separate taxable estates are also created for the purpose

1 of state and local taxes. 11 U.S.C. § 346(a). Individual
2 Chapter 11 debtors can elect to end the tax year as of the petition
3 date and create two short tax years. 26 U.S.C. § 1398(d)(2).

4 If the short-year election is made, then the tax obligation
5 for the pre-petition short year is collectible from the bankruptcy
6 estate, normally as a Bankruptcy Code section 507(a)(8) priority
7 claim. In re Eith, 111 B.R. 311, 313 (Bankr. D. Haw. 1990); In re
8 Prativadi, 281 B.R. 816, 819 (Bankr. W.D.N.Y. 2002); In re Johnson,
9 190 B.R. 724, 727 (Bankr. D. Mass. 1995). The preparation of tax
10 returns where the bankruptcy estate is liable for the taxes would
11 be beneficial and necessary to the bankruptcy estate.

12 If the short-year election is **not** made, then the entire tax
13 obligation for the tax year in which the individual debtor files
14 for Chapter 11 bankruptcy would be a post-petition personal
15 obligation of the debtor and not collectible from the bankruptcy
16 estate. Eith, 111 B.R. at 313; Prativadi, 281 B.R. at 819. This
17 is so because, if the election is **not** made, then the individual
18 debtor's tax year is determined without regard to the bankruptcy
19 case. 26 U.S.C. § 1398(d)(1).

20 According to the January 20, 2011 Declaration of Michael
21 Hendricks, Debtors' tax year closed post-petition on December 31,
22 2010. The corresponding taxes will be due and owing
23 either (1) post-petition on the date the tax year closes
24 or (2) post-petition on the date the tax return is due, which is
25 the fifteenth day of the fourth month after the close of the tax
26 year. 26 U.S.C. §§ 6151, 6072(a). Compare Pan American Van Lines
27 v. United States, 607 F.2d 1299 (9th Cir. 1979), with In re Joye,
28 578 F.3d 1070 (9th Cir. 2009). Likewise, the tax obligation for


1 the post-petition short year would be a post-petition personal
2 obligation of the debtor not collectible from the bankruptcy
3 estate. C. RICHARD MCQUEEN & JACK F. WILLIAMS, TAX ASPECTS OF BANKRUPTCY LAW
4 AND PRACTICE § 13:11, page 13-36 (3d ed. 2010); MICHAEL I. SALZMAN, IRS
5 PRACTICE AND PROCEDURE ¶ 10.06, page 10-86 (2d ed. 2010).

6 Thus, whether or not the election is made, some portion of the
7 tax liability would be a post-petition obligation not enforceable
8 against the bankruptcy estate. Debtors have not presented any
9 evidence or argument that the preparation of a tax return for a tax
10 liability which is not a liability of the bankruptcy estate would
11 be beneficial and necessary to the bankruptcy estate.

12 At this point, the Court is willing to approve the employment
13 of Accountant insofar as Accountant will prepare tax returns for
14 pre-petition tax liabilities owed by the bankruptcy estate.
15 Insofar as Accountant is preparing tax returns for post-petition
16 tax liabilities of Debtors, Debtors should use non-bankruptcy
17 estate assets to pay Accountant.

18 Counsel for Debtors shall prepare and submit a form of order
19 to this Court.

20
21 Dated: 3/11/11


ARTHUR S. WEISSBRODT
UNITED STATES BANKRUPTCY JUDGE

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